

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)	
)	Case No. 09-51420-399
ROKAS VARANAVICIUS)	Chapter 7
)	
Debtor.)	
)	Judge: Kathy Surratt-States
)	
J AND J HOME BUILDERS, INC.)	
)	
-v- Plaintiff)	
)	
ROKAS VARANAVICIUS)	Adv. No. 10-4166-659
)	
)	
Defendant.)	

PLAINTIFF'S FIRST AMENDED MOTION TO CONSOLIDATE

COMES NOW Plaintiff, J and J Home Builders, Inc. ("Plaintiff"), by and through its undersigned counsel, Dennis J. Barton III and the Barton Law Group, LLC, and for its First Amended Motion to Consolidate pursuant to Federal Rule of Civil Procedure 42(a), states as follows:

1. On or about November 10, 2009, Defendant filed a Voluntary Petition for Chapter 7 bankruptcy (hereinafter "Petition"). (Case No. 09-51420-399).
2. On August 14, 2009, Defendant was one of five named defendants in the case of J & J Homebuilders, Inc. d/b/a HomeSource v. Cherokee Villas, LLC, St. Louis County Circuit Court, Cause No. 08SL-CC03355 (August 7, 2008) (hereinafter "underlying case").
3. The J & J Homebuilders court awarded Plaintiff a judgment in the amount of \$717,428.00 (plus pre and post-judgment interest) to be paid by Defendant and other four co-defendants (hereinafter "Cherokee Villa defendants"), joint and severally (hereinafter "judgment

amount”). (See J & J Homebuilders, Judgment and Order, attached hereto and herein incorporated at Exhibit 1).

4. Defendant’s Petition seeks to discharge this judgment amount (Case No. 09-51420-399, Doc. 1, Schedule F and Statement of Financial Affairs).

5. On March 18, 2010, Plaintiff filed a Complaint Objecting to (Defendant’s) Discharge of the judgment debt amount.

6. On May 13, 2010, Plaintiff filed a Motion for Leave to First Amended Complaint Objecting to (Defendant’s) Discharge of the judgment debt amount. (Doc. 18). Leave granted and First Amended Complaint filed *instantly* on July 13, 2010. (Doc. 30).

7. Thomas Beck (hereinafter “Beck”) is one of the five Cherokee Villa Defendants. (Exh. 1).

8. On July 13, 2010, Beck filed his Voluntary Chapter 7 bankruptcy Petition (Case No. 10-47840-705), which sought to discharge the judgment amount debt.

9. On September 24, 2010, Plaintiff filed a Complaint Objecting to (Beck’s) Discharge of that judgment amount debt. (See Adv. No. 10-04418, Doc. 1).

10. On November 8, 2010, Plaintiff filed a Motion to Consolidate this case with Beck’s. (Doc. 36).

11. On December 15, 2010, the Court denied Plaintiff’s Motion to Consolidate without prejudice due to the fact that Beck had not yet been served with Plaintiff’s Complaint.

12. On December 27, 2010, Beck was served with an alias summons.

13. In exercising its broad discretion to order consolidation, a district court “weighs the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause.” (Huene v. U.S., 743 F.2d 703, 704 (9th Cir. 1984)).

14. Plaintiff's adversarial cases against Defendant and Beck allege the identical facts and will require the same written discovery, exhibits, deposition witnesses, and trial witnesses.

15. A denial to consolidate this case with the adversarial proceeding filed against Beck would require two separate judges to hear identical cases with the same evidence and exact same witnesses presumably saying the exact same thing.

16. This would result in the inconvenience, delay, and unneeded expense that Rule 42(a) is designed to prevent.

Wherefore, Plaintiff J and J Homebuilders, Inc., respectfully requests that this Court grant Plaintiff's First Amended Motion to Consolidate and transfer the case to Division 7N to be consolidated with the adversarial proceeding brought against Rokas Varanavicius, Adv. No. 10-4166-659, and for all other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED,
J AND J HOME BUILDERS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following:

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